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Office of Secretary

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September 6, 2006

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
455 12th Street, SW  
Washington, DC 20554

**REDACTED –  
FOR PUBLIC INSPECTION**

*Re: Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47  
U.S.C. § 160(c) in the New York Metropolitan Statistical Area*

Dear Ms. Dortch:

This is the cover letter for the Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the New York Metropolitan Statistical Area ("Petition").

This Petition contains confidential information. We are filing confidential and redacted versions of the Petition. The Petition consists of a stand-alone document entitled Petition of the Verizon Telephone Companies for Forbearance, and the Declaration of Quintin Lew, Judy Verses, and Patrick Garzillo Regarding Competition in the New York Metropolitan Statistical Area, along with supporting exhibits.

Specifically, we are herewith submitting for filing:

- a. One original of the confidential Petition (in paper form);
- b. One original of the redacted Petition (in paper form); and
- c. Two copies of the redacted Petition (in paper form).

We are also tendering to you certain copies of this letter for date-stamping purposes. Please date-stamp and return these materials.

Thank you for your assistance in this matter. If you have any questions, please call me at 703-351-3099.

Before the  
FEDERAL COMMUNICATIONS COMMISSION **RECEIVED**  
Washington, DC 20554

SEP - 6 2006

In the Matter of )

Petition of the Verizon Telephone )  
Companies for Forbearance Pursuant to )  
47 U.S.C. § 160 in the )  
New York Metropolitan Statistical Area )

WC Docket No. \_\_\_\_\_

Federal Communications Commission  
Office of Secretary

**PETITION OF THE VERIZON TELEPHONE COMPANIES  
FOR FORBEARANCE**

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September 6, 2006

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## I. INTRODUCTION AND SUMMARY

This forbearance petition seeks in the New York Metropolitan Statistical Area (“MSA”)<sup>1</sup> substantially the same regulatory relief the Commission granted in the *Omaha Forbearance Order*.<sup>2</sup> Throughout this MSA, Verizon faces competition from a wide range of technologies and an even broader array of providers. These competitive alternatives are available to mass-market and enterprise customers alike. As demonstrated in this petition and in the attached Declaration of Quintin Lew, Judy Verses, and Patrick Garzillo, this “level of facilities-based competition ensures that market forces will protect the interests of consumers,” and that the regulations at issue are no longer necessary. *Omaha Forbearance Order* ¶ 1. In fact, competition in the New York MSA is more advanced than it was in Omaha.

Mass-market consumers throughout the New York MSA now have access to a wide range of competitive alternatives for affordable local telephone service. As was the case in Omaha, cable operators in the New York MSA offer competitive voice services to the vast majority of the homes in the MSA. Cablevision, which serves nearly half the MSA, is the nation’s first cable operator to offer voice service to *all* its subscribers, and has stated that it is on track to be the primary wireline voice provider for more than a fifth of the homes it passes by the end of this year. Each of the three other major cable

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<sup>1</sup> The Verizon companies participating in this filing (“Verizon”) are the regulated, wholly owned subsidiaries of Verizon Communications Inc. References to the New York MSA mean Verizon’s incumbent local service territory in the New York-Northern New Jersey-Long Island, NY-NJ-PA MSA, as defined by the Office of Management and Budget as of December 2005.

<sup>2</sup> *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) (“*Omaha Forbearance Order*”).

companies that serve the New York MSA is also offering voice services, each has indicated that it intends to provide such services throughout virtually all of its franchise areas in the near future, and each appears close to achieving that goal in the New York MSA.

Other types of mass-market competition are even more advanced in the New York MSA than they were in Omaha. Each of the nation's major wireless carriers serves the entire New York MSA (or in some cases almost the entire MSA), each offers service that is competitive with Verizon's wireline service, and large and increasing numbers of consumers in the MSA are using these wireless alternatives in place of their wireline service. Consumers also can obtain telephone service from several dozen "over-the-top" VoIP providers, which can be accessed over competitive cable networks. Verizon also continues to face extensive competition from traditional CLECs, including carriers that obtain wholesale service from Verizon, which the Commission in the *Omaha Forbearance Order* deemed relevant to forbearance inquiries such as this one.

These various competitive alternatives are widely used in the New York MSA. Between 2000 and 2005, Verizon's retail residential switched access lines in the New York MSA declined by approximately **[Begin Proprietary]** **[End Proprietary]** percent, even though the number of households in the MSA increased by approximately 2 percent during this time. In this competitive environment, imposing regulation crafted in and for an earlier era is not only unnecessary, it is also counterproductive.

There is likewise intense competition for enterprise services in the New York MSA. As the Commission has found, cable companies are capable of using their ubiquitous cable networks to serve enterprise customers. As was the case in Omaha, each

of the major cable operators in the New York MSA is actively marketing higher capacity services to enterprise customers, including both smaller businesses and large enterprise customers. Apart from cable, there are even greater competitive alternatives for enterprise customers in the New York MSA – which has long been considered the most competitive metropolitan area in the country – than there were in Omaha. There are at least 24 known competitive fiber providers that operate networks reaching virtually all areas where enterprise customers are concentrated in the New York MSA, including wire centers that account for [Begin Proprietary] [End Proprietary] percent of Verizon's retail switched business lines in the MSA.

These competitive alternatives are widely used among enterprise customers in the New York MSA. In the last five years alone, Verizon's business lines in the New York MSA declined by approximately [Begin Proprietary] [End Proprietary] percent, even though the enterprise segment, like the business segment as a whole, grew overall. Moreover, these declines took place on top of the inroads that competitors made in the two prior decades.

**II. THE FIRST TWO PARTS OF THE FORBEARANCE TEST ARE SATISFIED AS A CONSEQUENCE OF THE FACT THAT TELECOMMUNICATIONS COMPETITION IN THE NEW YORK MSA IS ROBUST AND RAPIDLY GROWING**

Competition in the New York MSA – which has long been considered the most competitive metropolitan area in the country – is more advanced than it was in the Omaha MSA. Cable voice services are just as widely available in the New York MSA as they were in Omaha MSA, for mass-market and enterprise customers alike. Moreover, for both types of customers, other competitive alternatives are more advanced in the New York MSA than they were in Omaha. The Commission should accordingly find that the

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first two prongs of the forbearance test are satisfied and grant Verizon substantially the same relief that it granted in the *Omaha Forbearance Order*.<sup>3</sup>

#### **A. Mass-market Competition in the New York MSA**

Mass-market consumers throughout the New York MSA now have access to a wide range of competitive alternatives for affordable local telephone service. The most prevalent sources of competition are cable and wireless networks, which offer ubiquitous facilities-based alternatives to Verizon's service. In addition, consumers can obtain telephone service from literally dozens of so-called "over-the-top" VoIP providers, which can be accessed over competitive cable networks. Traditional CLECs, including carriers that obtain wholesale service from Verizon provide an additional layer of competition. As demonstrated below, in addition to being widely available, each of these competitive alternatives also is widely used by consumers in the New York MSA.

##### **1. Cable**

Each of the three major incumbent cable operators in the New York MSA – Cablevision, Time Warner, and Comcast – offers competitive voice services in its service territory, which collectively accounts for approximately 90 percent of the homes in the

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<sup>3</sup> Specifically, Verizon requests that the Commission forbear from applying loop and transport unbundling regulation pursuant to 47 U.S.C. § 251(c), *see* 47 C.F.R. § 51.319 (a), (b), (e). The Commission has determined that section 251(c) has been "fully implemented" for all incumbent LECs nationwide." *Omaha Forbearance Order* ¶¶ 51, 52; *see* 47 U.S.C. § 160(d). Verizon also seeks forbearance from the dominant carrier tariffing requirements set forth in Part 61 of the Commission's rules (47 C.F.R. §§ 61.32, 61.33, 61.38, 61.58, and 61.59); from price cap regulation set forth in Part 61 of the Commission's rules (*id.* §§ 61.41-61.49); from the Computer III requirements, including Comparably Efficient Interconnection ("CEI") and Open Network Architecture ("ONA") requirements; and from dominant carrier requirements arising under section 214 of the Act and Part 63 of the Commission's rules concerning the processes for acquiring lines, discontinuing services, assignments or transfers of control, and acquiring affiliations (*id.* §§ 63.03, 63.04, 63.60-63.66).

New York MSA. *See* Lew/Verses/Garzillo Decl. ¶ 14. In addition, RCN operates an overlapping cable network in Manhattan and Queens over which it also provides voice service. *See id.* ¶ 26.

These cable operators either already offer voice service throughout virtually all of their New York MSA franchise areas, or have indicated they will be capable of doing so very shortly. Cablevision – which has the most extensive network in the New York MSA, passing approximately 3.3 million homes (roughly 46 percent of the MSA-wide total) – has publicly stated that it offers voice service to *all* of its subscribers. *See id.* ¶ 15. Time Warner, Comcast, and RCN all offer voice services in the New York MSA, *see id.* ¶ 7, and each has indicated that it will offer voice services throughout virtually all of its franchise areas, *see id.* ¶¶ 19, 23-24, 26. Exhibit 3 of the Lew/Verses/Garzillo Declaration contains a map showing these incumbent cable operators' New York MSA franchise territories where they are or soon will be providing voice services.

Data on where cable companies in the New York MSA are already serving customers confirm that they are close to meeting their goal of providing voice service throughout their franchise territories. When a cable company wins a new residential subscriber, it typically obtains an E911 listing for that subscriber. *See id.* ¶ 18.

According to the residential E911 listings cable companies have obtained as of the end of December 2005, cable companies in the New York MSA collectively provide voice service to residential customers in wire centers that account for at least [Begin

Proprietary] [End Proprietary] percent of Verizon's residential access lines in



the MSA.<sup>4</sup> See Lew/Verses/Garzillo Decl. ¶ 28. Moreover, these data likely understate the extent of competition for mass-market customers as a whole, because they are based only on residential E911 listings and do not include E911 listings for the small business customers that the Commission also has defined as part of the mass market. See *Omaha Forbearance Order* ¶ 28 n.78.<sup>5</sup>

There is likewise no question that these cable operators are offering voice service that is comparable to Verizon's. In the *Omaha Forbearance Order*, the Commission held that Cox's voice services "compete as substitutes for Qwest's wireline telecommunications service offerings." *Id.* ¶ 65; see *id.* ¶ 33.<sup>6</sup> The same is true here. As the chart provided as Exhibit 1 to the Lew/Verses/Garzillo Declaration shows, cable

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<sup>4</sup> This figure is presented as a range because Verizon's data do not in all cases allow an E911 listing to be associated with a specific wire center. The low end of the range is based on the E911 listings that can be directly attributed to a specific wire center (because there is only one wire center associated with the NPA-NXX code for the E911 listing), and therefore represents the minimum number of wire centers (and associated access lines) in which competing carriers are providing service. The high end of the range is derived by applying an allocation methodology to those E911 listings that cannot be directly attributed to a specific wire center (because there is more than one possible wire center associated with the NPA-NXX code for the E911 listing). This methodology proportionally assigns E911 listings to each of the possible wire centers with which the E911 listing can be associated. See Lew/Verses/Garzillo Decl. ¶ 7 n.6.

<sup>5</sup> Although the Commission in the *Omaha Forbearance Order* analyzed the extent to which cable companies were able to provide service to a certain percent of end user customers within a wire center, it recognized that only cable companies themselves have access to such data and that there is no way for carriers like Verizon "to discern exactly where its facilities-based competitors are capable of providing service." *Omaha Forbearance Order* ¶ 69 & n.187. Verizon has accordingly used E911 listings data here.

<sup>6</sup> See also *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433, ¶¶ 87-88 (2005) ("*Verizon/MCI Order*") (holding that "facilities-based VoIP providers" that "own and control the last mile facility clearly fall within the relevant service market for local service." These services "have many similar characteristics to traditional wireline local service" and are viewed by mass-market customers "as sufficiently close substitutes for local service.").

operators in the New York MSA are offering voice service that is competitive with Verizon's own offering and are comparably priced.

*Large and increasing numbers of mass-market consumers in the New York MSA* now subscribe to cable voice services. In the *Omaha Forbearance Order*, the Commission relied on E911 listings data as a "directional surrogate" for the number of access lines served by facilities-based competitors such as cable operators. *Omaha Forbearance Order* ¶¶ 29, 58 n.152. The Commission analyzed E911 listings only for residential customers, however, *see id.* ¶ 28, even though this understates facilities-based competition in the mass-market because it excludes the very small business customers that the Commission also has defined within this segment, *see id.* ¶ 28 n.78. According to E911 listings data as of the end of December 2005, Cablevision, Time Warner, Comcast, and RCN collectively serve approximately **[Begin Proprietary]** **[End Proprietary]** residential subscribers in the New York MSA. *See* Lew/Verses/Garzillo Decl. ¶ 28. These totals are rising rapidly. For example, Cablevision reports that it is adding an average of more than 9,000 voice telephony customers each week, and analysts expect that Cablevision will be the voice provider for 27 percent of the homes it passes by the end of 2006.<sup>7</sup> Time Warner reports that it is adding an average of 18,000 customers per week nationwide, while Comcast reports that it is adding an average of more than 17,000 customers per week nationwide.<sup>8</sup>

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<sup>7</sup> *See* Cablevision Press Release, *Cablevision Systems Corporation Reports Second Quarter 2006 Selected Operating and Financial Measures* (Aug. 8, 2006); *see also* Lew/Verses/Garzillo Decl. ¶ 17.

<sup>8</sup> *See* Time Warner Press Release, *Time Warner Inc. Reports Second Quarter 2006 Results* (Aug. 2, 2006); Comcast Press Release, *Comcast Reports Second Quarter 2006 Results* (July 27, 2006); *see also* Lew/Verses/Garzillo Decl. ¶¶ 20, 24.

In sum, there are “extensive [cable] facilities in the [New York] MSA capable of delivering . . . mass market . . . services.” *Omaha Forbearance Order* ¶ 66; *see id.*

¶¶ 35-36 (finding that such facilities demonstrate that supply elasticities are high). These cable operators have been “successfully providing local exchange and exchange access services . . . without relying on [Verizon’s] loops or transport.” *Id.* ¶ 64. Thus, as the Commission held in the *Omaha Forbearance Order*, this competition is, standing alone, “sufficient to justify forbearance” from loop and transport unbundling regulations, *id.* ¶ 69, and from dominant carrier regulation of switched access services, *id.* ¶ 36 (“Cox’s extensive facilities build-out in the Omaha MSA, and growing success in luring Qwest’s mass market customers, indicates that the first factor is easily satisfied for . . . switched access . . . services.”).

## **2. Wireless**

Verizon also faces competition in the New York MSA from multiple wireless providers. Mass-market customers are increasingly using wireless services in place of traditional wireline telephone services. Wireless services are therefore appropriate to include in the forbearance analysis.

In the Commission’s most recent analysis of the extent of competition between wireless and wireline services, it recognized that “growing numbers of particular segments of the mass market are choosing mobile wireless service in lieu of wireline local services”; that “approximately 6 percent of households have chosen to rely upon mobile wireless services for all of their communications needs”; that “Verizon considers this growing substitution in developing its marketing, research and development, and corporate strategies for its local service offerings”; that certain wireless carriers such as

Sprint Nextel “would likely take actions that would increase intermodal competition between wireline and mobile wireless services”; and that “intermodal competition between mobile wireless and wireline service will likely increase in the near term.” *Verizon/MCI Order* ¶ 91. The Commission also recognized that, “[e]ven if most segments of the mass market are unlikely to rely upon mobile wireless services in lieu of wireline local services today,” in order for wireless service to constrain prices for wireline service the analysis “only requires that there be evidence of sufficient substitution for significant segments of the mass market.” *Id.* The Commission accordingly concluded that “mobile wireless services should be included within the product market for local services to the extent that customers rely on mobile wireless service as a complete substitute for . . . wireline service.” *Id.*

Significantly, the Commission’s conclusions with respect to wireless were not confined or unique to any particular geographic market but instead applied generally to all relevant geographic markets. The Commission also recognized that it was not necessary to evaluate competition on a granular geographic basis and that a state-level analysis was a “reasonable approach to our analysis, particularly given that Verizon’s pricing . . . is generally advertised on a statewide basis.” *Id.* ¶ 100. Although the Commission reached these conclusions in the context of analyzing a merger, the purpose of that analysis – determining the extent of mass-market competition – is identical to the one here, and the Commission’s conclusions should therefore hold the same weight here as they did in that context.

Against this backdrop, the evidence shows that, in the New York MSA, wireless service is another form of facilities-based competition that, both taken alone and

particularly in combination with other forms of facilities-based competition, is sufficient to ensure that market forces will protect the interests of consumers.

First, competitive wireless service is available throughout the New York MSA.

As demonstrated in the maps attached as Exhibit 4 to the Lew/Verses/Garzillo Declaration, Cingular, Sprint Nextel, and T-Mobile all offer telephone services in the New York MSA, and competitive wireless service from at least one of these carriers is available throughout the New York MSA. *See* Lew/Verses/Garzillo Decl. ¶ 30 & Exhibit 4.

Second, each of these carriers offers packages of services that are competitive with Verizon's wireline service for comparable offerings. *See id.* ¶ 31 & Exhibit 1. Exhibit 1 to the Lew/Verses/Garzillo Declaration contains a chart comparing the most prominently advertised plans of the major wireless carriers in the New York MSA with Verizon's comparable wireline offerings in the MSA. The chart demonstrates that the features and prices of these plans are comparable, even without considering the added value that consumers receive from mobility. Although these plans will not necessarily appeal to all consumers in the MSA, they obviously appeal to the vast majority (given that they are the most heavily marketed), and are therefore able to impose competitive discipline on wireline services. *See Verizon/MCI Order* ¶ 91.

Third, the use of wireless in the New York MSA is extensive. According to the FCC's most recent data, there were 12.6 million wireless subscribers in New York State as of the end of December 2005.<sup>9</sup> By comparison, as of that same date, ILECs and

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<sup>9</sup> Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *Local Telephone Competition: Status as of December 31, 2005*, at Table 14 (July 2006).

CLECs reported serving 8.0 million and 3.6 million wireline access lines, respectively.<sup>10</sup>

The portion of the New York MSA within New York state represents nearly two-thirds of *the population of the state*,<sup>11</sup> and there is no basis to suppose that wireless use is any less prevalent in the New York MSA than in the state as a whole (indeed, if anything, the converse is likely to be true, given the favorable demographics of the New York MSA).<sup>12</sup> Moreover, in the past year, the number of national wireless subscribers has continued to grow rapidly (by approximately 12 percent), while the number of wireline access lines has declined. *See* Lew/Verses/Garzillo Decl. ¶ 32. This trend is likely to be even more pronounced in the New York MSA than in the nation as a whole.

Finally, the evidence demonstrates that large and growing numbers of customers are using wireless service in place of traditional wireline service. Unfortunately, there are no sources of which Verizon is aware that compile data on the extent to which this is occurring on an MSA (or even state-wide) basis. Nonetheless, as discussed in Section II.A.5 below, it is clear from what has happened to Verizon's embedded base of wireline access lines in the New York MSA that a significant number of customers are giving up their wireline service in favor of wireless alternatives.

National trends provide confirmation of this fact. *See id.* ¶ 33. According to Deutsche Bank, "wireless cannibalization" now accounts for "more than 1m lines lost per

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<sup>10</sup> *See id.* at Tables 9 & 10.

<sup>11</sup> U.S. Census Bureau, *County Population Dataset*, <http://www.census.gov/popest/counties/files/CO-EST2005-ALLDATA.csv> (2005 estimates).

<sup>12</sup> For example, according to the U.S. Bureau of Economic Analysis, the New York MSA has the eighth highest per capita personal income of any MSA, more than 30 percent higher than the U.S. as a whole. *See* BEA News Release, *Local Area Personal Income, 2004* (Apr. 25, 2006).

quarter.”<sup>13</sup> Lehman Brothers estimates that 20 million wireline access lines have been lost to wireless providers since 1999, and that going forward 6 million additional wireline *access lines will be lost to wireless each year.*<sup>14</sup> *Analysts predict that the number of wireless-only users will grow to 20-25 percent of the market by 2010.*<sup>15</sup>

Even greater displacement has occurred in terms of the number of customers using their wireless service as their primary phone, and, as a result, in the amount of traffic migrating from wireline to wireless networks. *See* Lew/Verses/Garzillo Decl. ¶¶ 33-35. The Yankee Group estimates that wireless subscribers make 64 percent of their long-distance calls and 42 percent of their local calls on their wireless phones.<sup>16</sup> *See* Lew/Verses/Garzillo Decl. ¶ 34. These very high usage levels demonstrate consumers’ willingness to use wireless in place of wireline and indicate that customers would have a viable alternative should Verizon attempt to raise its wireline prices. This competition accordingly protects against such price increases in the first instance.

### **3. Over-the-Top VoIP Providers**

There are more than 25 “over-the-top” VoIP providers that currently offer service in the New York MSA. *See* Lew/Verses/Garzillo Decl. ¶ 40 & Exhibit 2. As demonstrated in the charts attached as Exhibits 1 and 2 to the Lew/Verses/Garzillo

<sup>13</sup> V. Shvets, *et al.*, Deutsche Bank, *4Q04 Review: Wireless OK . . . RBOCs Fare Poorly* at 6 (Feb. 28, 2005).

<sup>14</sup> *See* B. Bath, Lehman Brothers, *Telecom Services – Wireline* at Figure 11 (July 7, 2005).

<sup>15</sup> *See* D. Barden, *et al.*, Banc of America Securities, *Setting the Bar: Establishing a Baseline for Bell Consumer Market Share* at 4 (June 14, 2005); F. Louthan, *et al.*, Raymond James Equity Research, *Reassessment of Access Lines and Wireline Carriers* at 2 (July 5, 2006) (predicting 25 percent wireless substitution by 2010).

<sup>16</sup> K. Griffin, Yankee Group, *Pervasive Substitution Precedes Displacement and Fixed-Mobile Convergence in Latest Wireless Trends* at 5 and Exhibit 3 (Dec. 2005).

Declaration, these providers offer services with features comparable to Verizon's wireline telephone service, at prices that typically are lower than Verizon's prices, even *when the price of the underlying broadband connection needed for VoIP service is taken into account.* See *id.* ¶¶ 40-41 & Exhibits 1-2. Although these providers do not operate their own loop and transport networks, they can be provided over competitive networks that do (such as cable networks), and therefore are an added source of competitive discipline on Verizon.

In the *Verizon/MCI Order*, the Commission recognized that "some proportion of mass market customers may view certain over-the-top VoIP services as substitutes for wireline local service." *Verizon/MCI Order* ¶ 89. This turns on whether consumers have existing broadband connections and on their particular local service requirements. See *id.* At the time, the Commission held that the evidence regarding the extent to which these conditions are satisfied was "inconclusive." *Id.*

Since the record compiled in the Verizon/MCI proceeding, however, the competitive significance of over-the-top VOIP services has continued to grow. For example, while Vonage, the largest over-the-top VOIP provider, served 600,000 customers at the time of that earlier proceeding,<sup>17</sup> that figure has now grown to more than two million, and Vonage reports that it is adding an average of more than 22,000

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<sup>17</sup> See Joint Opposition of Verizon Communications Inc. and MCI, Inc. to Petitions to Deny and Reply to Comments, at 56, *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75 (FCC filed May 24, 2005).



subscribers each week.<sup>18</sup> Analysts estimate that over-the-top VoIP providers will displace 5 percent of local telephone access lines by the end of 2010.<sup>19</sup>

*The percentage of consumers subscribing to broadband services also continues to grow and is expected to increase even further in the future, which means that an even greater proportion of customers will find VoIP services an attractive alternative. See Verizon/MCI Order ¶ 89. In the New York MSA, approximately 48 percent of households subscribed to broadband service as of June 2006.*<sup>20</sup>

#### **4. Wholesale Alternatives**

In the *Omaha Forbearance Order*, the Commission also relied in part on competitors' ability to use the ILEC's wholesale offerings pursuant to "provisions of the Act designed to develop and preserve competitive local markets." *Omaha Forbearance Order* ¶ 64; *see id.* ¶ 37. The Commission recognized that where there are "very high levels of retail competition that do not rely on the [ILEC's] facilities – and for which [the ILEC] receives little to no revenue" the ILEC has "the incentive to make attractive wholesale offerings available so that it will derive more revenue indirectly from retail customers who choose a retail provider other than [the ILEC]." *Id.* ¶ 67.

As demonstrated above, there is extensive facilities-based retail competition in the New York MSA and Verizon has in fact made attractive wholesale offerings available even when it has no obligation to do so. Following the Commission's decision to

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<sup>18</sup> See Vonage Press Release, *Vonage Crosses 2 Million Line Mark* (Sept. 5, 2006); Vonage, Form 10-Q at 14 (SEC filed Aug. 4, 2006); *see also* Lew/Verses/Garzillo Decl. ¶ 39.

<sup>19</sup> See J. Chaplin, *et al.*, JPMorgan, *Telecom Services/Wireline: State of the Industry: Consumer* at 12 (Jan. 13, 2006); *see also* Lew/Verses/Garzillo Decl. ¶ 42.

<sup>20</sup> Centris Plus, *Market Report – Area* (2Q 2006).

eliminate the UNE platform, Verizon began offering its Wholesale Advantage service, which provides the same features and functionality of the UNE platform but at negotiated market rates. As of the end of December 2005, competitors in the New York MSA were serving approximately [Begin Proprietary] [End Proprietary] voice-grade equivalent residential lines using this wholesale product. *See* Lew/Verses/Garzillo Decl.

¶ 38. As of that same date, competitors were reselling an additional [Begin Proprietary] [End Proprietary] voice-grade equivalent residential lines in the New York MSA pursuant to the resale provisions of Section 251(c)(4). *See id.*

### ***5. Decline in Verizon's Retail Lines***

In the *Omaha Forbearance Order*, the Commission held that the proper focus should be on the availability of competitive alternatives, rather than on the number of customers who have already chosen to switch to such alternatives. The Commission will look at both “actual and potential competition” that “either is present, or readily could be present.” *Omaha Forbearance Order* ¶ 62. This focus on the availability of actual and potential competitive alternatives rather than static market share is consistent with the approach the Commission has taken in other contexts. The Commission has long held that “an analysis of the level of competition for LEC services based solely on a LEC’s market share at a given point in time would be too static and one-dimensional.”<sup>21</sup> “[T]he

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<sup>21</sup> *Price Cap Performance Review for Local Exchange Carriers*, Second Further Notice of Proposed Rulemaking in CC Docket No. 94-1, Further Notice of Proposed Rulemaking in CC Docket No. 93-124, and Second Further Notice of Proposed Rulemaking in CC Docket No. 93-197, 11 FCC Rcd 858, ¶ 143 (1995).

presence and capacity of other firms matter more for future competitive conditions than do current subscriber-based market shares.”<sup>22</sup>

As demonstrated above, there are multiple competitive alternatives that are widely available in the New York MSA and that also are being used by mass-market consumers throughout the MSA. This fact is further confirmed by the declines that Verizon has experienced in its base of switched access lines. Between 2000 and 2005, Verizon’s retail residential switched access lines declined by approximately **[Begin Proprietary]**

**[End Proprietary]** percent, even though the number of households in the MSA increased by at least 2 percent during this time. See Lew/Verses/Garzillo Decl. ¶ 8.<sup>23</sup> Analysts expect these declines to continue in the future.<sup>24</sup>

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<sup>22</sup> *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent To Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, ¶ 148 (2004); see also *Verizon/MCI Order* ¶ 74 (holding that market share data is entitled to little weight because it “does not reflect the rise in data services, cable and VoIP competition, and the dramatic increase in wireless,” nor the fact that “myriad providers are prepared to make competitive offers.” As a result, “market shares may misstate the competitive significance of existing firms and new entrants.”)

<sup>23</sup> Including data for the former MCI, Verizon served more than **[Begin Proprietary]** **[End Proprietary]** voice-grade equivalent residential access lines in the New York MSA as of December 2005. See Lew/Verses/Garzillo Decl. ¶ 6.

<sup>24</sup> See, e.g., J. Hodulik, et al., UBS, *Wireline Postgame Analysis 13.0: Recap of Fourth Quarter 2005 Results* at 6 (Mar. 14, 2006) (In the fourth quarter of 2005, “[t]otal access line losses for the wireline carriers continued to accelerate, declining 5.8% compared with a 5.3% decline in the prior quarter and 4.2% decline a year ago. All the carriers showed worsening trends with Verizon leading the pack.”); *id.* at Table 25 (estimating that Verizon served 79 percent of households passed in its region at end of 2005, and that Verizon will serve only 70 percent of households within its region at the end of 2006.); J. Chaplin, et al., JPMorgan, *Telecom Services/Wireline: Fourth-Quarter 2005 Wrap* at 5 (Mar. 23, 2006) (“Industry access lines declined 4.4% y/y, marking the sixth consecutive quarter that the rate of line loss has accelerated sequentially. We attribute the acceleration in line loss to an increase in wireless and broadband substitution. In addition, since households grow at approximately 1.2% per year. . . the 1.7 million lines lost in the [fourth quarter of 2005] probably understates the real impact of substitution.”).

**B. Competition for Enterprise Customers in the New York MSA**

Just as the provision of services to mass-market customers in the New York MSA is highly competitive, so is the provision of services to enterprise customers.

In the *Omaha Forbearance Order*, the Commission decided to forbear from loop and transport unbundling with respect to enterprise customers based on competition from Cox, the incumbent cable operator, together with “maps and other evidence” that other competitors have deployed their own transport facilities, and additional evidence that competing carriers were using wholesale alternatives to compete successfully. *Omaha Forbearance Order* ¶ 66; *see id.* ¶ 67. As demonstrated below and in the attached Lew/Verses/Garzillo Declaration, Verizon is providing here the same types of information on which the Commission relied to forbear from loop and transport unbundling and from dominant-carrier regulation of switched access services in Omaha. As in the mass-market, evidence demonstrates that “the level of facilities-based competition [in the New York MSA] ensures that market forces will protect the interests of consumers.” *Id.* ¶ 1.

In its most recent analysis of enterprise competition in Verizon’s region, the Commission acknowledged that there is a wide range of competitors that have deployed “extensive local fiber networks” in Verizon’s region, including in the New York MSA. *Verizon/MCI Order* ¶ 44; *see id.* ¶¶ 30, 45. The Commission also found that retail competition for enterprise customers is “strong” and will remain so “because medium and large enterprise customers are sophisticated, high-volume purchasers of communications services that demand high-capacity communications services, and because there [are] a significant number of carriers competing in the market.” *Id.* ¶ 56. The Commission

noted that Verizon competes with a long list of competitors, “includ[ing] interexchange carriers, competitive LECs, cable companies, other incumbent LECs, systems integrators, and equipment vendors.” *Id.* ¶ 64. The Commission concluded that these “myriad providers are prepared to make competitive offers,” and that they therefore “ensure that there is sufficient competition.” *Id.* ¶ 74. These facts all remain true today, both as a general matter, and in particular with respect to the New York MSA.

First, cable companies have ubiquitous cable networks in the New York MSA, and these networks are capable of – and are – being used to serve enterprise customers. In the *Omaha Forbearance Order*, the Commission found that Cox’s cable facilities were “capable of delivering both mass market and enterprise telecommunications services.” *Omaha Forbearance Order* ¶ 66. The Commission relied on the fact that Cox had “strong success in the mass market, its possession of the necessary facilities to provide enterprise services, its technical expertise, its economies of scale and scope, its sunk investments in network infrastructure, its established presence and brand in the Omaha MSA, and its current marketing efforts and emerging success in the enterprise market.” *Id.* The Commission also noted that Cox had particularly strong incentives to compete for enterprise customers as compared to the mass-market, because the “revenue potential” is greater. *Id.* The Commission concluded that, in light of these facts, “Cox poses a substantial competitive threat . . . for higher revenue enterprise services.” *Id.* In reaching this conclusion, the Commission found the fact that Cox’s existing network did not necessarily reach every individual business location as “not . . . dispositive” in light of the other evidence demonstrating Cox’s incentives and ability to serve these customers. *Id.* ¶ 66 n.174.

This same analysis applies with equal force here. As demonstrated above, each of the major cable companies in the New York MSA – Cablevision, Time Warner, Comcast, and RCN – has had “strong success in the mass market.” Moreover, these carriers operate ubiquitous cable networks and, therefore, possess “the necessary facilities to provide enterprise services.” Indeed, these companies already market services to business customers over their cable networks, including Internet access service, voice service, or both. The statements of the cable operators themselves – which are collected in Exhibit 7 of the Lew/Verses/Garzillo Declaration and highlighted below – confirm this fact:

- Cablevision offers “Optimum Voice for Business,” which provides “local, regional and long distance calling . . . for one low, fixed per-line monthly rate: a rate that could save you as much as 60 percent per month, or more.”<sup>25</sup> Cablevision also offers “Optimum Online for Business,” which it describes as a “super-fast, reliable and affordable broadband service that’s ideal for just about any business.”<sup>26</sup> Cablevision notes that the service offers “downstream speeds up to 10 Mbps” and “is delivered via the hybrid fiber coax (HFC) network owned and operated by Cablevision.”<sup>27</sup>
- Time Warner Cable offers “Road Runner Business Class” in the “New York Metro Area” and “Hudson Valley” with services that provide speeds up to 2 Mbps upstream and 8 Mbps downstream.<sup>28</sup> Time Warner Cable “has provided communication services to the business community in New York City for over 25 years.”<sup>29</sup>

<sup>25</sup> Cablevision, *Optimum Voice for Business, What Is It*, [http://www.optimum.com/business/index.jhtml?pageType=ov\\_what\\_is\\_it](http://www.optimum.com/business/index.jhtml?pageType=ov_what_is_it).

<sup>26</sup> Cablevision, *Optimum Online for Business, What Is It*, [http://www.optimum.com/business/index.jhtml?pageType=ps\\_bcool](http://www.optimum.com/business/index.jhtml?pageType=ps_bcool).

<sup>27</sup> *Id.*

<sup>28</sup> See Time Warner Cable, *Time Warner Cable Business Class*, [http://www.twcnyc.com/index2.bus.cfm?c=new\\_bus/roadrunner](http://www.twcnyc.com/index2.bus.cfm?c=new_bus/roadrunner).

<sup>29</sup> Time Warner Cable, *Private Networks*, [http://www.twcnyc.com/index2.bus.cfm?c=new\\_bus/privatenetwork](http://www.twcnyc.com/index2.bus.cfm?c=new_bus/privatenetwork).

- Comcast offers business customers service through its subsidiary, Comcast Commercial.<sup>30</sup> Comcast offers a variety of data services to business customers in the New York MSA, including dedicated Internet access, Ethernet, and metropolitan area network services.<sup>31</sup> Comcast also offers cable modem services for use by smaller businesses.<sup>32</sup> In addition, Comcast offers data services to other telecommunications carriers, leveraging “the massive network of our parent company.”<sup>33</sup> For carriers, Comcast offers “[c]ost-effective transport that can reach into new markets and scale at a moments notice.”<sup>34</sup>
- RCN Business Solutions offers the “Triple Play of Cable TV, Data and Internet services delivered in bulk” to larger enterprise customers, including “10 Mbps Internet connections.”<sup>35</sup> RCN Small Business also offers phone and Internet services to smaller businesses.<sup>36</sup>

In addition to using their cable networks to serve business customers, each of the major cable companies in the New York MSA has separate subsidiaries or affiliates that are dedicated to serving enterprise customers using fiber networks. Cablevision boasts that Optimum Lightpath, which operates 2,700 route mile of fiber in the New York MSA, “has been at the forefront of business communications” “[f]or more than 17 years.”<sup>37</sup> See

<sup>30</sup> See Comcast Commercial, [http://www.comcastcommercial.com/index.php?option=com\\_frontpage&Itemid=1](http://www.comcastcommercial.com/index.php?option=com_frontpage&Itemid=1).

<sup>31</sup> See Comcast Commercial, *Services*, <http://www.comcastcommercial.com/index.php?option=content&task=view&id=6&Itemid=27>; Comcast Commercial, *Enterprise Network Service*, <http://www.comcastcommercial.com/index.php?option=content&task=view&id=8&Itemid=37>.

<sup>32</sup> See Comcast, *Comcast Workplace*, <http://www.comcast.com/business/Availability.ashx> (using zip code 07304).

<sup>33</sup> Comcast Commercial, *Telecommunications: Increasing Margins with Lower Transport Costs*, <http://www.comcastcommercial.com/index.php?option=content&task=view&id=33&Itemid=71>.

<sup>34</sup> *Id.*

<sup>35</sup> RCN Business Solutions, *Broadband Services*, [http://www.rcnbusinesssolutions.com/services/broadband\\_services/index.php](http://www.rcnbusinesssolutions.com/services/broadband_services/index.php).

<sup>36</sup> See RCN, *Small Business*, <http://www.rcn.com/smallbusiness/>.

<sup>37</sup> Optimum Lightpath, *Products & Services*, <http://www.optimumlightpath.com/Interior5.html>.

Lew/Verses/Garzillo Decl. ¶ 52. Time Warner Telecom operates an extensive fiber network in the New York MSA that it states it uses to provide a “comprehensive suite of voice, data, dedicated Internet and integrated communications services.”<sup>38</sup> See Lew/Verses/Garzillo Decl. ¶ 65. RCN operates a fiber network in the New York MSA that it recently expanded with the acquisition of Con Ed Communications, the telecommunications operating unit of Consolidated Edison. According to RCN, RCN Business Solutions relies on its “advanced, dense metropolitan fiber optic network for: Wholesale markets . . . Enterprise markets: hospitality/lodging, broadcast media; education; finance; construction; and real estate vertical markets. . . [and] Government markets: federal, state and local municipalities.”<sup>39</sup> See Lew/Verses/Garzillo Decl. ¶ 55. Comcast Commercial asserts that it “delivers a full suite of Internet and network services that can meet the needs [and] demands of any size business and any business application.”<sup>40</sup> See also Lew/Verses/Garzillo Decl. ¶ 54.

As this evidence makes clear, each of the major cable operators in New York has the requisite facilities and infrastructure, “technical expertise,” “economies of scale and scope,” and “established presence and brand” to serve business customers. Each of these companies is large and well-established both in general and in the New York MSA. See

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<sup>38</sup> Time Warner Telecom, *Our Networks*, [http://www.twtelecom.com/about\\_us/networks.html#TWTC](http://www.twtelecom.com/about_us/networks.html#TWTC). Time Warner Telecom “licenses the right to use fiber optic capacity in 23 of its 44 markets from Time Warner Cable. The Company pays its allocable share of the cost of fiber and construction incurred by Time Warner Cable in routes where the parties are in joint construction.” Time Warner Telecom Inc., Form 10-K (SEC filed Mar. 16, 2006).

<sup>39</sup> RCN Press Release, *RCN Enhance Company's Business Solutions Division; Targets Enterprise, Wholesale Carriers & Government* (Oct. 10, 2005).

<sup>40</sup> Comcast Commercial, *Our Company*, <http://www.comcastcommercial.com/index.php?option=content&task=view&id=3&Itemid=33>.



*id.* ¶¶ 15, 19, 22, 55. Each already has been successful in serving business customers in the MSA. *See id.* ¶¶ 51-55, 65.

Second, there are extensive competitive fiber networks in the New York MSA. According to GeoTel, a leading provider of telecommunications facilities information, there are at least 24 known competing providers that operate fiber networks within the New York MSA, and those networks span at least [Begin Proprietary] [End Proprietary] route miles. *See id.* ¶ 46 & Exhibit 5.<sup>41</sup> These competitive providers include traditional telecom carriers (such as AT&T, Sprint, Level 3, Paetec, and XO), cable companies or their affiliated CLEC units (such as Time Warner Telecom, Cablevision's Lightpath, and RCN),<sup>42</sup> entities that function principally as wholesale suppliers (such as AboveNet, Enkido, and NEON), and others. *See id.* ¶¶ 50-68 & Exhibit 5.

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<sup>41</sup> As GeoTel itself recognizes, its information regarding CLEC fiber routes, while extensive, is not comprehensive. GeoTel continually works to update its databases, and it provides Verizon with updates approximately every six months. Each of these updates contains new information. Moreover, GeoTel does not have complete data for every CLEC. During the course of the Verizon/MCI merger, for example, Verizon received other confidential sources of data that showed additional CLEC fiber beyond what is contained in the GeoTel data. Thus, there is reason to believe that the GeoTel information understates, perhaps significantly, the extent to which CLECs have self-provisioned high-capacity transport facilities. In fact, the total reported here does not include the vast majority of fiber that AT&T operates, even though AT&T operates one of the largest fiber networks in the New York MSA. GeoTel does not have complete data for AT&T in the New York MSA. *See* Lew/Verses/Garzillo Decl. ¶ 10.

<sup>42</sup> Cablevision operates Optimum Lightpath to serve business and wholesale customers. *See* Lew/Verses/Garzillo Decl. ¶ 52. Lightpath operates a fiber network that extends more than 2,700 route miles. *See id.* Lightpath's fiber is not included in the GeoTel data or, as a result, in the maps in Exhibits 5 and 6 to the Lew/Verses/Garzillo Declaration. A separate map of Lightpath's network, taken from the company's own website, is produced in Exhibit 8 to the Lew/Verses/Garzillo Declaration.